

REMARKS

Claims 1-23 were examined. Claims 1-2 and 5, 7-12, 15-16, and 20-23 are amended. Claims 3, 6, 13-14, and 17-19 are canceled. Claims 24-42 are added. Examination and reconsideration of all pending claims are respectfully requested.

Information Disclosure Statement

Applicant is filing herewith an Information Disclosure Statement (IDS). Applicant respectfully requests that the pending claims be examined in light of the references cited in the IDS, and that such references be listed in the "References Cited" portion of any patent that issues from this patent application.

Objected Claims – Allowable Subject Matter

Dependent claims 3-10 and 19-23 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form, including all of the limitations of the base claim and any intervening claim.

Applicant thanks the Examiner for the indication of allowable subject matter. To expedite prosecution of the present application, Applicant has amended independent claims 1, 2, and 11 to incorporate the subject matter of allowable dependent claims 3, 6, and 19, respectively. Consequently, amended independent claims 1, 2, and 11 should be allowable.

Applicant has further amended independent claim 12 to include the limitation that the control circuit "employs a calculation of entropy." Such a limitation substantially corresponds to the subject matter of original dependent claim 20 (which was deemed to contain allowable subject matter). Applicant believes amended claim 12 should also be allowable.

Claim Rejection Under 35 U.S.C. § 102

Claims 1, 2, and 11-18 are rejected as allegedly being anticipated by Fischell et al. (U.S. Patent No. 6,016,449). As described above, independent claims 1, 2, 11, and 12 have been amended to incorporate the allowable subject matter of dependent claims 3, 6, 19, and 20. Applicant has also canceled independent claims 13-14. Claims 15 and 16 depend from amended claims 11 and 12, respectively. As claims 11 and 12 should now be allowable for at least the reasons given above,

Applicant believes claims 15 and 16 should also be allowable. Claims 17 and 18 are canceled. Consequently, the rejections under 35 U.S.C. § 102 are moot.

Double Patenting Rejection – Obviousness Type

The double patenting rejection is moot in view of the amendments made to independent claims 1, 2, 11 and 12 and the cancellation of claims 13-14.

New Claims

To more fully claim the novel aspects of the present invention, Applicants have added new claims 24-42. New independent claim 24 incorporates the subject matter of claims 1 and 23. Since dependent claim 23 was indicated as defining allowable subject matter, new independent claim 24 should be allowable. For at least the same reasons, new dependent claims 25-33 (which depend from allowable claim 24) should also be allowable.

Independent claim 34 is directed toward a system for neural modulation of a patient for the treatment of epilepsy. Claim 34 contains the limitation that the output assembly is “configured to analyze the processed one or more signals for seizure prediction.” Such a limitation is similar to the limitation of dependent claim 23 - which was indicated as being allowable. While the other elements of claim 34 do not correspond exactly to the elements of allowable claims 11 and 23, Applicant believes that new claim 34 should be allowable for the same reasons that claims 11 and 23 are allowable.

Finally, claim 42 is directed to a system for neural modulation in the treatment of disease. The system includes “a control assembly in communication with the signal conditioning assembly, the control assembly employing a calculation of seizure prediction.” Such a limitation corresponds to the limitation of allowable claim 23 – which was indicated as being allowable. While the other elements of claim 42 do not correspond exactly to the elements of allowable claims 11 and 23, Applicant believes that new claim 42 should be allowable for the same reasons that claims 11 and 23 are allowable.

CONCLUSION

In view of the foregoing, Applicant believes all claims now pending in this application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested. If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-493-9300.

The Commissioner is authorized to charge any additional fees which may be required, including petition fees and extension of time fees, to Deposit Account No. 23-2415 (Docket No. 31685-704.503).

Respectfully submitted,



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By: _____

Tom Zlogar, Reg. No. 55,760

WILSON SONSINI GOODRICH & ROSATI
650 Page Mill Road
Palo Alto, CA 94304
Customer No. 021971

Telephone: (650) 493-9300